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4 MIGUEL G. SIFUENTES,
5 Petitioner,
6 v.
7 CHANCE ANDES,
8 Respondent.

9 Case No. [24-cv-01387-HSG](#)
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12 **ORDER GRANTING LEAVE TO
PROCEED IN FORMA PAUPERIS;
GRANTING MOTION TO STAY AND
ABEY ACTION; DISMISSING AS
MOOT MOTION TO DISMISS;
DIRECTING CLERK TO STAY AND
ADMINISTRATIVELY CLOSE CASE**
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14 Re: Dkt. Nos. 4, 12, 15

15 Petitioner has filed a *pro se* petition for a writ of habeas corpus under 28 U.S.C. § 2254
16 challenging the denial of his petition for resentencing under Cal. Penal Code § 1172.6. Dkt. No. 1.
17 For the reasons set forth below, the Court GRANTS Petitioner's request to proceed *in forma*
18 *pauperis*, Dkt. No. 4; GRANTS Petitioner's motion to stay and hold these proceedings in
19 abeyance, Dkt. No. 15; DISMISSES as moot Respondent's motion to dismiss, Dkt. No. 12; and
20 DIRECTS the Clerk to STAY and ADMINISTRATIVELY CLOSE this case.

DISCUSSION

21 Petitioner commenced this action on or about March 8, 2024. Dkt. No. 1. The petition
22 alleges that the state court violated the Due Process Clause when it denied Petitioner's petition for
23 resentencing under Cal. Penal Code § 1172.6 because there is insufficient evidence to support
24 Petitioner's felony murder conviction. Dkt. Nos. 1, 8. The Court found that this allegation stated
25 a cognizable claim for federal habeas relief. Dkt. No. 8.

26 Respondent filed a motion to dismiss this petition for failure to state a cognizable claim for
27 relief. Dkt. No. 12.

28 On December 9, 2024, Petitioner requested an extension of time to file his opposition to

United States District Court
Northern District of California

1 Respondent's motion to dismiss. Dkt. No. 13. In the request for an extension of time, Petitioner
2 stated that, in late October 2024, he learned that Judge Jacobsen, the judge who denied his
3 resentencing petition, had worked on Petitioner's case as an Alameda County District Attorney
4 investigator and, during that time, covered up prosecutorial misconduct. Petitioner alleged that
5 Judge Jacobson denied the resentencing petition to cover up his own misconduct and the
6 misconduct of his then-office, the Alameda County District Attorney's office. *Id.* Petitioner
7 requested a thirty-day extension of time to file his opposition so that he could include his newly
8 discovered claim of judicial bias and misconduct. *Id.* The Court granted the request for an
9 extension of time, but cautioned Petitioner as follows:

10 To the extent that Petitioner seeks to file a supplemental brief raising additional
11 challenges to the state court denial of his resentencing petition, the Court cautions
12 Petitioner that he may not amend his petition piecemeal. If Petitioner wishes to raise
13 additional challenges to the state court denial of his resentencing petition, he must file an
14 amended petition that presents all his challenges to the state court denial of his
15 resentencing petition. In addition, any challenges to Petitioner's sentence or conviction
16 must first be presented to the state courts before being raised in a federal habeas petition.
See 28 U.S.C. § 2254. Petitioner states that he has only recently learned of Judge
Jacobsen's bias and misconduct, so it appears unlikely that Petitioner has presented this
challenge to the denial of his state court resentencing petition to the state courts, as
required by 28 U.S.C. § 2254.

17 Dkt. No. 14 at 1-2.

18 Petitioner has filed a motion requesting that the Court stay this petition and hold it in
19 abeyance, so that he may exhaust state court remedies for his newly discovered claim of judicial
20 misconduct or bias. Dkt. No. 15. The Court GRANTS the request for a stay. It is within the
21 Court's discretion to stay fully exhausted petitions. *See Duke v. Gastelo*, 64 F.4th 1088, 1098 (9th
22 Cir. 2023) (holding that district court's denial of stay and dismissal of fully exhausted petition was
23 abuse of discretion because (1) no possibility stayed petition would interfere with state
24 resentencing proceeding, (2) district court was not limited to considering a *Rhines/Kelly* stay,
25 which apply only to mixed petitions, and (3) denying stay "unnecessarily created a significant risk
26 that [petitioner] would lose his one chance for federal review of his constitutional claims"). The
27 Court has examined the record, and it appears that Petitioner has shown good cause for his failure
28 to exhaust his claims of judicial misconduct and bias before filing this petition, the claims do not
appear patently meritless, and there does not appear to be any intentionally dilatory litigation tactic

1 by petitioner. Petitioner is cautioned that he must exhaust his claims in the California Supreme
2 Court. *See McNeeley v. Arave*, 842 F.2d 230, 231 (9th Cir. 1988) (petitioner must present to
3 highest state court all claims he wishes to raise in federal habeas petition). Petitioner must also
4 promptly return to federal court after his state court proceedings have concluded. Within **thirty**
5 (**30**) **days** from the date the California Supreme Court completes its review of Petitioner's claims,
6 Petitioner must inform this Court if he wishes to seek further relief in this Court. Upon returning
7 to federal court, Petitioner must seek leave to amend his petition to add the newly exhausted
8 claims, and must show that the amendment of any newly exhausted claims back into the petition
9 satisfies both *Mayle v. Felix*, 545 U.S. 644, 655 (2005), by sharing a "common core of operative
10 facts" and *Duncan v. Walker*, 533 U.S. 167 (2001), by complying with the statute of limitations.
11 The Court expresses no opinion as to whether Petitioner can successfully satisfy the criterion set
12 forth in *Mayle* and *Duncan*.

CONCLUSION

- 14 1. The Court GRANTS Petitioner's request for leave to proceed *in forma pauperis*.
15 Dkt. No. 4. No filing fee is due.
- 16 2. The Court GRANTS Petitioner's motion for to stay and abbey this case. Dkt. No.
17 15. This action is hereby STAYED while Petitioner exhausts his unexhausted claim(s) in the state
18 courts.
- 19 3. If Petitioner is not granted relief in state court, he may return to this Court and ask
20 that the stay be lifted. To do so, Petitioner must notify the Court within **thirty (30) days** from the
21 date the California Supreme Court completes its review of Petitioner's claims. The notice must
22 clearly identify in the caption that it is to be filed in Case No. C 24-1387 HSG (PR). Upon
23 Petitioner's filing of the notification that his claims have been exhausted, the Court will lift the
24 stay, reopen the case, and schedule further proceedings.
- 25 4. If Petitioner does not take any further action, this case will remain stayed and he
26 will not receive any ruling from the Court on his petition.
- 27 5. In light of the stay, the Court DISMISSES as moot Respondent's motion to
28 dismiss. Dkt. No. 12.

1 6. The Clerk shall ADMINISTRATIVELY CLOSE the file pending the stay of this
2 action. This has no legal effect; it is purely a statistical procedure.

3 This order terminates Dkt. Nos. 4, 12, 15.

4 **IT IS SO ORDERED.**

5 Dated: February 21, 2025

6 
7 HAYWOOD S. GILLIAM, JR.
8 United States District Judge

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United States District Court
Northern District of California